

BOARD OF FORESTRY AND FIRE PROTECTION

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Staff Memo on Petition for Administrative Rulemaking, Revisions to Title 14, CCR §§ 1052 “Emergency Timber Operations,” and 895.1 “Definitions” filed by EPIC, KS Wild, and Ebbetts Pass Forest Watch

This paper provides a staff assessment of documentation provided to the Board of Forestry and Fire Protection (Board) as a Petition for Administrative Rulemaking pursuant to Gov. Code §§ 11340.6, 11340.7, 11346.1, and (Petition). The first section provides background information. The second and third sections provide background pertinent to the topics contained within the petition.

Background

In January of 2017, the Board received a Petition from the Environmental Protection Information Center (EPIC), requesting amendments to existing regulations, specifically with regards to Emergency Timber Operations (14 CCR § 1052), and related definitions (within 14 CCR § 895.1). At the time, the Board denied the petition on the grounds that it did not meet the requirements of Gov. Code § 11340.6 in that it did not “clearly and concisely” state the “nature of the regulation, amendment, or repeal requested” or the “reference to the authority of the state agency to take the action requested.”

With the denial of the January 2017 Petition, the Board also offered the petitioner an alternative approach and invited the petitioner to prepare all documents necessary to satisfy the notice requirements under Article 5 of the Administrative Procedures Act (APA) for the Board, or a Board Committee to consider the issues raised in the petition.

On July 27, 2017, EPIC, along with Klamath-Siskiyou Wildlands Center (KS Wild), and Ebbetts Pass Forest Watch (EPFW) (collectively Petitioners), submitted a Petition which included most of the documents required under Article 5 of the APA, as requested by the Board, including a 45-Day Notice (Notice), Initial Statement of Reasons (ISOR), and proposed amended Rule Text. The Board thereby scheduled an introduction of the Petition at the August FPC/MGMT Joint Committee meeting for consideration of commencing rulemaking. It was discussed with a representative of the Petitioners, Mr. Rob DiPerna, that the discussion of the petition by the FPC/MGMT Joint Committee constitutes a “hearing” pursuant to Government Code 11340.7(a).

Topics Covered in Request for Regulatory Revision

- Rules Fail to Provide a Clear and Applicable Definitions of “Emergency” conditions;
- Rules Fail to Clearly Specify What Rules are Considered “Operational”;
- Rules Fail to Require Attainment of Minimum Resource Conservation Standards or a Plan for Artificial Regeneration;
- Rules Fail to Prohibit “Take” of Federally and State Protected Species;
- Rules Fail to Require Distribution of Emergency Notices to Other Trustee and Review Tea Agencies and Fail to Ensure Adequate Time for Review of Emergency Notices by Other Trustee and Review Team Agencies.

Background and History of Emergency Notices

Current Statues

PRC § 4592.

Notwithstanding any other provisions of this chapter, a registered professional forester may in an emergency, on behalf of a timber owner or operator, file an “emergency notice” with the department that shall allow immediate commencement of timber operations. The emergency notice shall include a declaration, under penalty of perjury, that a bona fide emergency exists which requires immediate harvest activities, and that any applicable timber yield taxes will be paid pursuant to Section 38115 of the Revenue and Taxation Code. Those emergencies shall be defined by the board and may include, but are not limited to, the necessity to harvest to remove fire-killed or damaged timber or insect or disease-infested timber, or to undertake emergency repairs to roads.

Regulatory History

<u>Year</u>	<u>Rulemaking</u>	<u>Summary of Changes</u>
1981	Regular	Adopt new definition of “emergency” particularly in reference to financial loss, and emphasizes that emergency ops. must comply with Board rules. Also prescribes conditions of emergencies and requires RPFs to describe the nature of their emergencies (See Rulemaking Index File 008).
1989	Emergency	Adopted 1052.3 Emergency Notices for Insect Damaged Timberlands (See Rulemaking Index Files 113, 121, 125, 132)
1991	Regular	Adopted 1052.3 Emergency Notices for Insect Damaged Timberlands (See Rulemaking Index File 150)
1995	Regular	Amended 1052(g) to change 60 limit on emergency operations to 120 days and requires timber operations to comply with Board Rules applicable to THPs. Also requires 5 day waiting period from filing, unless waived. Amended 1052.2 to require compliance with minimum stocking requirements at completion of operations (See Rulemaking Index File 203).
1995	Regular	Amended 1052.2 to specify mapping requirements of watercourses (See Rulemaking Index File 207)
1997	Regular	Amended 1052(h) to require site records pursuant to 929.1[949.1, 969.1] (See Rulemaking Index Files 219, 226)
2000	Regular	Adopted definition of “substantially damaged timberlands” with provision that damage reduced stocking below minimum requirements of PRC 4561. Amended 1052 to eliminate req. that notice contain declaration that a bona fide emergency exists, replacing with declaration that yield taxes will be paid. Adopted Notice form (See Rulemaking Index File 242).

2004	Emergency	Adopted form RM-65 for Fuel Hazard Reduction Emergencies, provided 15 days for Director review of FHR Emergencies. Adopted 1052.4 Emergency Notices for Fuel Hazard Reduction, requiring all trees harvested/retained to be marked and only those under 30 inches DBH may be harvested. States stocking requirements for FHR Emergencies (See Rulemaking Index Files 268, 671, & 274).
2005	Regular	Cert of Compliance for 1052., 1052.1, 1052.4. Sunsets 1052.1 to 12/31/07. Amends 1052.4 to allow for sample mark and for exceptions to diameter restrictions if necessary to meet fuel reduction objectives. (See Rulemaking Index File 270).
2007	Emergency	Amends 1052.1(f) to include removal for fire lookouts. Adopt 1052.5 to allow emergency notice for fire lookouts (See Rulemaking Index File 295).
2008	Regular	Amends 1052.4 to include habit requirements of PRC 4291. (See Rulemaking Index File 299).
2009	Regular	Amend 1052 <i>et al</i> allowing timber operations to continue for 1 year from date Emergency Notice is accepted (See Rulemaking Index File 308).
2011	Emergency	Amends 1052 <i>et al</i> to allow include SOD infestation as emergency condition. (See Rulemaking Index File 321).
2012	Regular	Makes permanent SOD allowances (See Rulemaking Index File 330).
2014	Regular	Revises Confidential Archaeological Letter Requirements for Emergency Notices (See Rulemaking Index File 344).
2017	Non-substantive	Corrects grammatical errors and makes language consistent within FPRs (See Rulemaking Index 372).

Other on-going activities that may affect decisions on the Petition in whole or in part:

- Priorities Reporting for 2018;
- Required Reporting to the Legislature on Emergencies and Exemptions;
- Authorized Notice for revision of the Definition of Activity Center for Northern Spotted Owl;
- Potential Recommendations from the Interagency Northern Spotted Owl Working Group;
- Stakeholder recommendations on NSO provided by Department of Fish and Wildlife (Dated 08/27/17);
- Board “options” for further development/refinement of NSO Regulations as a result of past Petition for Rulemaking; and
- Interagency discussion pertaining to development of a Safe Harbor Agreement for NSO and timber operations